

## **Part 2**

### **Authority, Powers, Contractual Waiver, and Notification Requirements**

#### **7-16a-201 Authority to operate an automated teller machine.**

An automated teller machine located in this state shall be operated only by:

- (1) a depository institution;
- (2) a depository institution holding company; or
- (3) an institution directly or indirectly owned or controlled by one or more depository institutions or depository institution holding companies.

Enacted by Chapter 111, 1997 General Session

#### **7-16a-202 Powers of depository institutions operating automated teller machines -- Fees or surcharges.**

- (1) An operator may:
  - (a) make an automated teller machine available for use by customers of one or more issuers;
  - (b) connect the automated teller machine with an electronic consumer funds transfer system connecting one or more depository institutions to one or more automated teller machines; and
  - (c) impose a transaction fee for the use of the automated teller machine, if the imposition of the transaction fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee.
- (2) Except for the dispensing of currency or coin or accepting deposits or payments, any service provided by an operator to a customer at the automated teller machine is not governed by this chapter.
- (3) The transaction fee permitted in Subsection (1)(c) may be in addition to any other charges imposed by any of the following entities involved in the transaction:
  - (a) an electronic consumer funds transfer system;
  - (b) a depository institution; or
  - (c) an issuer.
- (4)
  - (a) Any of the following entities may charge any or all customers any transaction fee allowed or not prohibited by state or federal law:
    - (i) a depository institution;
    - (ii) an owner;
    - (iii) an operator;
    - (iv) an issuer; or
    - (v) an electronic consumer funds transfer system.
  - (b) A transaction fee allowed under this section includes a charge to a customer conducting a transaction using an account from an institution providing financial services that is located outside of the United States.
  - (c)
    - (i) Subject to Subsection (4)(c)(ii) and to the extent not prohibited by federal law, an agreement to operate or share an automated teller machine may not prohibit, limit, or otherwise restrict a person described in Subsection (4)(a) from charging a customer for use of or access to the automated teller machine on the basis of the customer using an account from an institution providing financial services that is located outside of the United States if the charge is not otherwise prohibited under state or federal law.

- (ii) Notwithstanding Subsection (4)(c)(i), nothing in this section may be construed to prohibit, limit, or otherwise restrict the ability of a person described in Subsection (4)(a) from voluntarily entering into an agreement to participate in a surcharge free network.

Amended by Chapter 17, 2007 General Session

**7-16a-203 Contractual waiver of Uniform Commercial Code provisions.**

- (1)
  - (a) Subject to Subsections (1)(b) and (2), if the application of Title 70A, Uniform Commercial Code, is inconsistent with the operation of an automated teller machine, a point-of-sale terminal, or both, the requirements of Title 70A, Uniform Commercial Code, may be varied by contractual agreement of any:
    - (i) depository institution;
    - (ii) switching facility; or
    - (iii) clearinghouse as defined by Section 70A-4-104.
  - (b) A contractual agreement under Subsection (1)(a) may not disclaim responsibility for or limit the measure of damages for a depository institution's, switching facility's, or clearing house's:
    - (i) lack of good faith; or
    - (ii) failure to exercise ordinary care.
- (2) Notwithstanding Subsection (1)(a), the commissioner may, after notice and hearing, require rescission or modification of any provision of a contractual agreement permitted by Subsection (1)(a) if:
  - (a) that provision relates to the rights and obligations of:
    - (i) account holders of depository institutions;
    - (ii) merchants;
    - (iii) merchant customers; or
    - (iv) others using or having access to automated teller machines, point-of-sale terminals, or both; and
  - (b) the commissioner finds the provision is unconscionable or contrary to the public interest.

Enacted by Chapter 111, 1997 General Session

**7-16a-204 Department notification requirements.**

- (1)
  - (a) Except as provided in Subsection (3), an operator may not operate, relocate, or discontinue operating an automated teller machine unless the operator provides notice to the department in accordance with this section.
  - (b) An operator may operate, relocate, or discontinue operating an automated teller machine 30 days from the day the department accepts the notice filed under this section as complete.
  - (c) No later than 30 days before operating, relocating, or discontinuing the operation of an automated teller machine located in this state, the operator shall notify the department of the intent to operate, relocate, or discontinue the operation of the automated teller machine.
  - (d) The notice required under Subsection (1)(a) shall state:
    - (i) if operating or relocating an automated teller machine:
      - (A) the proposed location of the automated teller machine;
      - (B) whether the proposed location is permanent or temporary; and
      - (C) the period the automated teller machine will be at the proposed location, if the location is temporary; and

- (ii) any information requested on a form prescribed by the department.
- (e) The department may not require the operator to pay a fee for filing the notice required under this Subsection (1).
- (2) The failure to provide notice to the department as required in Subsection (1) is a violation against which the commissioner may exercise the general enforcement powers set forth in Section 7-1-320.
- (3) This section does not apply to automated teller machines located at the main office or at a branch of a depository institution authorized to transact business in this state.
- (4) For purposes of this section, "discontinue" or "discontinuing" means an interruption in the operation of an automated teller machine of 30 days or more.

Enacted by Chapter 111, 1997 General Session